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1 RECORD OF ORAL HEARING

2
3 UNITED STATES PATENT AND TRADEMARK OFFICE

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6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES

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9
10 Ex parte PARAG GOKHALE, RAJIV KOTTOMTHARAYIL,
11 and SRINIVAS KAVURI

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14 Appeal 2008-1254
15 Application 09/991,900
16 Technology Center 2100

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19 Oral Hearing Held: April 8, 2008
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23 Before JOSEPH L. DIXON, LANCE LEONARD BARRY, and CAROLYN
24 D. THOMAS, Administrative Patent Judges.

25
26 ON BEHALF OF THE APPELLANTS:

27
28 CHRISTOPHER J. WATSON, ESQUIRE
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34 The above-entitled matter came on for hearing on Tuesday, April 8,
35 2008, commencing at 9:00 a.m., at The U.S. Patent and Trademark Office,
36 600 Dulany Street, Alexandria, Virginia, before Dominico Quattrociocchi,
37 Notary Public.

1 JUDGE DIXON: Carolyn Thomas hearing the case today.

2 MR. WATSON: Wonderful. Greetings from cold, dark and wet
3 Seattle.

4 JUDGE BARRY: Well, welcome.

5 JUDGE DIXON: So, you have 20 minutes. You can begin whenever
6 you're ready.

7 MR. WATSON: Sure. So, the issues, all the issues discussed in the
8 Brief I'd like to address states three errors from the Office Action demands.
9 First, there's no appropriate rationale provided in the Office Action of the
10 answers to combine the two references, and thus, a *prima facie* case of
11 obviousness is lacking.

12 Second, primary reference does not disclose exporting from an
13 automated data storage library of removable data storage media like a
14 magnetic paper disk. Neither reference discloses this claimed exported data.

15 JUDGE BARRY: It's hard to believe there's no *prima facie*.

16 JUDGE DIXON: Is there, is there any weight to the argument?

17 MR. WATSON: Finally, neither reference discloses the scheduling
18 of inter-export of a tape from an automated data storage library. So, time
19 permitting let me address each of these three errors.

20 So, typically, back up of data is done at night or on the weekends
21 when there's less than active load on the computer's other servers. And
22 most of these backups involve lots of data gigabits of data, typically, on a
23 magnetic tape or other removable media. And, I'll just talk about tapes for
24 the sake of convenience here, although there's other kinds of removable data
25 storage media that could be used.

1 So, many of these systems use these automated tape libraries. It's
2 basically a closed box at the computer and a robotic arm that can move a
3 bunch of tapes from shelves or slots in the library to mount or un-mount
4 them; those tapes to drives so that data can be read from the tape or written
5 to the tape.

6 So, this library is a closed system. It needs to know what tapes are
7 within it so that it can keep track of them. As new tapes are introduced to
8 the library or imported via a special port, the library takes, takes knowledge
9 of each of those newly imported tapes.

10 Likewise, when tapes are exported from the library, it can remove
11 them from them from the list knowing that they're no longer within its
12 universe of know tapes.

13 The problem here that the inventors recognize is that this export
14 command that might be issued from a host computer or some server that's
15 ordered this backup saying back up these gigabit to data. Put it on a tape,
16 and export it and maybe send it to Iron Mountain or some outside data
17 storage location. Because, because backups done at night or the weekend,
18 there's no one around then. So, once this command is issued, the tapes
19 automatically export it form the library, but if there's no one there to deal
20 with it, they either get backed up in the output import, or maybe an operator
21 will show up on Monday morning, see a stack of tapes, export it to the
22 library and figure out what to do with them.

23 And, so it's with that problem in mind that the inventors came upon
24 the claimed invention. Let's address the first error.

25 Neither of the references alone or in a combination discuss this
26 problem. The primary reference is Crouse (phonetic sp.), and Crouse

1 discusses a file system to better handle, among other things, secondary data,
2 secondary data storage. And, when I mean secondary data storage, what I
3 refer to is, say, archive data. And, that means it's usually put in a format
4 that's different from primary storage. Primary storage is when you can
5 easily access it from a computer. Secondary made some changes often to
6 help save space when you're storing this data. And, Crouse deals with the
7 idea of a file system of a way to track files where I'll have online primary
8 easily available data, as well as, secondary data that might be archived
9 stored elsewhere; could be stored in a tape library. Baca deals with the
10 problem of, well how do I export a bunch of tapes out of a group of tapes I
11 might want to export and I don't have to do this surreally. Bacca comes up
12 with the solution of well, I'll put them in magazines or groups of six or so,
13 and I'll export a whole block of them.

14 But, neither of these references deal with the problem of when to
15 export a tape. All of them assume that a tape is exported immediately, as
16 soon as the library receives the command. Looking through the Office
17 Action and the answer, I'm, I don't believe that a cogent rationale for the
18 combination of the two references is presented. And, we can go into that
19 further, but let me, let me add move on to talk about the other two errors.

20 Second, the second error is that Crouse, the primary reference doesn't
21 disclose this claimed data to track when to export references -- export tapes,
22 excuse me. There's just no export ID data. Crouse is cited in particular this
23 removable media resource file is cited from Crouse. But, this removable
24 media resource file just identifies a specific entity of removable storage
25 media according there from Crouse. This basically allows the system of
26 Crouse to identify what type of drive to mount the media into; for example,

1 is this a, you know, a particular type of tape that only fits in a particular type
2 of drive, or is it a type of, let's say, an optical disk again is it going to run
3 optical disk drive. Baca only discloses a table to identify where tapes are in
4 the library. But, neither of the references discloses data of when the tapes
5 should later be exported. You know, what time of day, day of week should
6 these tapes later be exported?

7 Finally, nothing in the prior art that we're discussing here addresses
8 these two times associated with exporting. When you receive in a first time,
9 data that identifies the tape to export, and later at a second time, exporting
10 that tape. In particular, you look at Claim 12, it goes on to recite that there's
11 this user interface that allows a user to receive data identifying the second
12 time in which the tape is scheduled to be exported. So, Baca is cited for the
13 scheduling. But read in context, the particular paragraph of Baca that
14 mentions the word scheduling talks about when to schedule the movement of
15 the robotic arm, which in the library is basically a command queue. The, the
16 scheduling mentioned in the Office Action and the answers when looked at
17 the context at Baca (phonetic sp.), it's directed to the scheduling of the
18 movement of the arm in the, the library. So, you know, there would -- he
19 talks about how you've got to move the arm; these are grippers. You have
20 to open the gripper, grab the tape and move it to some place. And, so there
21 will be a series of command that would tell the robot what to do; move here,
22 open your arms, grab the tape, pull out the tape, move it, put it some place
23 else.

24 Indeed, the answer effectively admits that Baca only discloses this job
25 scheduling queue on Page 9 in the answer. Also, Baca, around Column 7,
26 Line 50, talks about how but once you export something, you're going to

1 have to have a human and operator that take the tape and do something with
2 it, or in this case the whole cassette that includes multiple tapes. This would
3 have been a convenient place in Baca to describe the scheduling of exporting
4 because you once scheduled when the operator was there, but again, there's
5 nothing in Baca to describe that.

6 JUDGE BARRY: So, the Examiner admits that the primary
7 reference doesn't specify this second time?

8 MR. WATSON: Correct. And, you would distinguish that just a
9 queue is only a feature unspecified time that's not specified at the first time -
10 -

11 MR. WATSON: Correct.

12 JUDGE DIXON: -- when you identify the file.

13 MR. WATSON: Correct. And, the first time you specify here's the
14 tape I want to export, and here's a second time that I would like it exported,
15 and the references when they have a tape to be exported it's effectively
16 immediately acted upon. I see effectively because there may be preceding
17 commands in the queue that need to be processed first, but it's not
18 calendared for, oh let's wait until Monday morning to do this operation.

19 JUDGE DIXON: So, as soon as possible is not a, a second time?

20 MR. WATSON: Correct.

21 JUDGE DIXON: Do you have anything further?

22 MR. WATSON: I do not.

23 JUDGE DIXON: Any questions? No? Okay, thank you, very much.

24 JUDGE THOMAS: Thank you.

25 MR. WATSON: Thank you.

26 JUDGE DIXON: All right, bye.

1 MR. WATSON: Bye-bye.

2 (Whereupon, the proceedings concluded at 9:40 a.m. on April 8,
3 2008).